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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

JOHN CURTIS BENEDITZ,

Defendant and Appellant.

F077984

(Super. Ct. No. F17906783)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Fresno County. Adolfo M. Corona, Judge.

Michele A. Douglass, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and Respondent.

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* Before Poochigian, Acting P.J., Franson, J. and Meehan, J.

Appellant John Curtis Beneditz pled no contest to assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1)). Following independent review of the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On November 5, 2017, at approximately 4:12 p.m., as B. Shoffner rode his mini dirt bike on Locan Avenue in Fresno, Beneditz stood in the middle of the street holding a baseball bat. Shoffner was unable to stop because his brakes were not working and as he rode by, Beneditz swung the bat, striking Shoffner on the helmet he was wearing. Shoffner felt pain in his head and began bleeding profusely. He drove home, his brother called law enforcement, and he was eventually taken by ambulance to a local hospital.

Fresno County Sheriff's Deputies found Beneditz on the street and detained him. While seated in the back of a patrol car, Beneditz spontaneously stated, "I wasn't trying to hurt him, I was just trying to bonk him on top of his helmet." After waiving his *Miranda*¹ rights, Beneditz explained that he was frustrated by people driving their off-road vehicles in front of his property, disturbing his animals and destroying his property. While in his front yard, he saw Shoffner riding a mini bike, retrieved a baseball bat, and waited for him to return. He became frustrated when Shoffner would not stop to talk and swung the bat at him. Although he aimed at Shoffner's helmet, he hit him in an uncovered area of his eye. The deputies located the bat, which had a large dent on its barrel.

On November 17, 2017, the Fresno County District Attorney filed a complaint charging Beneditz with assault with a deadly weapon.

On June 18, 2017, Beneditz pled no contest to assault with a deadly weapon in exchange for a two-year lid.

¹ *Miranda v. Arizona* (1966) 384 U.S. 868.

On August 1, 2018, the court sentenced Beneditz to a two-year prison term. In pertinent part, the court also ordered Beneditz to pay a probation report fee of \$296.

On August 22, 2018, Beneditz filed a timely appeal.

Beneditz's appellate counsel has filed a brief that summarizes the facts, with citations to the record, raises no issues, and asks this court to independently review the record. (*People v. Wende, supra*, 25 Cal.3d 436.) Beneditz has not responded to this court's invitation to submit additional briefing. However, our review of the record disclosed that Beneditz's abstract of judgment does not memorialize the \$296 probation report fee the court imposed and we will direct the trial court to correct this omission.

Following an independent review of the record, we find that no reasonably arguable factual or legal issues exist.

DISPOSITION

The trial court is directed to issue an amended abstract of judgment that memorializes the \$296 probation report fee the court imposed and the statutory authority for that fee, and to forward a certified copy to the appropriate authorities. In all other respects, the judgment is affirmed.